

ATTACHMENT 14

1
2 UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4 Case No. 3:21-cv-03825-VC

5 -----x
6 IN RE: DA VINCI SURGICAL ROBOT LITIGATION,
7 -----

8 THIS DOCUMENT RELATES TO:
9 ALL CASES

10 -----x

11 November 1, 2022

12 12:45 p.m.

13 HIGHLY CONFIDENTIAL

14 Videotaped deposition of IMRON
15 ZAFAR, pursuant to subpoena, before Jineen
16 Pavesi, a Registered Professional
17 Reporter, Registered Merit Reporter,
18 Certified Realtime Reporter and Notary
19 Public of the State of New York, via Zoom,
20 with all other parties in person at Cohen
21 Milstein, 88 Pine Street, New York, New
22 York.

1 ZAFAR

2 issued?

3 A. I don't see any signs to say
4 otherwise, but, again, based on my
5 ten-second eyeballing of it, yes, it looks
6 familiar.

7 Q. So taking Exhibits 112 and 113
8 together, the two reports, focusing on the
9 reports, why did Deutsche Bank issue these
10 reports generally?

11 A. Because Intuitive Surgical is
12 one of the stocks under our coverage and
13 the competitive implications of this, of
14 these emerging third parties, you know,
15 was notable to me.

16 And, you know, given the
17 potential theoretical repercussions for
18 Intuitive and its business model, which
19 relies very heavily on instruments, yeah,
20 I viewed this kind of theme, emerging
21 theme, as being potentially impactful to
22 Intuitive's business and stock price and
23 that is my job, is to, you know, provide
24 intelligence and recommendations around
25 stock price at the end of the day.

1 ZAFAR

2 If I had to say my job in one
3 sentence, that's what I do, provide stock
4 recommendations.

5 Q. So the third parties that you
6 mentioned in your answer just now, were
7 those the third parties that were engaging
8 in the Da Vinci instrument repair?

9 MR. DeBAUGH: Objection to
10 form.

11 A. Correct.

12 Q. Who were these reports intended
13 for, generally speaking?

14 A. Institutional investors, so
15 portfolio managers at mutual funds, hedge
16 funds, et cetera.

17 Q. Around this time did Deutsche
18 Bank issue company research reports
19 regularly?

20 A. I don't remember the full of
21 reports, but, again, yes, this specific
22 time period, yes, it's safe to assume,
23 yes, that's what we do, we publish
24 regularly and consistently, so, yeah, I
25 would say yes.

1 ZAFAR

2 Refurbished Da Vinci Instruments: Over
3 the past few weeks we consulted with five
4 regulatory and legal experts to gain
5 further clarity on both the regulatory/FDA
6 and service contract angles."

7 Who were those five experts
8 that you consulted with?

9 MR. DeBAUGH: Objection.

10 A. I don't recall off the top of
11 my head; again, we talked to so many
12 consultants all the time, literally
13 hundreds since this was published, I
14 literally don't remember.

15 Q. And then if you can go to page
16 8, it is a slide that says "510(k)
17 Premarket Notification Does Not Appear
18 Applicable" at the top.

19 It says, "The immediate
20 feedback to our downgrade note was that
21 Restore Robotics is subject to 510(k)
22 approval requirement and that because the
23 company does not have 510(k) clearance, it
24 is therefore in clear violation of FDA
25 regulations."

1 ZAFAR

2 EndoWrist can be used?

3 MS. SCHOENBACH: Objection,
4 vague.

5 A. Anyone period, any -- before
6 you said I think any other company.

7 Q. I changed my question --

8 A. Okay --

9 Q. For the record, let me repeat
10 my question.

11 Have you spoken to anyone as to
12 whether extending the number of times a Da
13 Vinci EndoWrist can be used requires
14 510(k) clearance?

15 A. Yes.

16 Q. Who have you spoken with about
17 that?

18 A. I can't name specifics, but
19 consultants that were referenced in some
20 of these reports, regulatory experts,
21 consultants that do FDA regulatory
22 consulting for medical device companies,
23 et cetera.

24 But the specifics I can't tell
25 you, but those conversations definitely

1 ZAFAR

2 were had with multiple expert consultants.

3 Q. You can't remember any
4 individual specifically you spoke --

5 A. Correct, correct.

6 Q. In your general recollection of
7 these conversations, about when did those
8 conversations happen?

9 A. I don't remember.

10 Q. Do you know whether or not
11 Restore Robotics is engaged in litigation
12 against Intuitive Surgical?

13 A. I am.

14 Q. When did you become aware that
15 Restore is in litigation with Intuitive
16 Surgical?

17 A. I don't remember.

18 Q. Was it before or after the date
19 of your report in Exhibit 112, January 27,
20 2020?

21 A. I don't remember.

22 Q. Do you know whether it was
23 before -- withdrawn.

24 Do you know whether you became
25 aware that Restore Robotics was engaged in

1 ZAFAR

2 three, four consultants a week, by
3 consultants I mean surgeons, hospital
4 CEOs.

5 If I said literally hundreds,
6 that might have been a little bit
7 hyperbolic, but suffice it to say it's in
8 the dozens.

9 Q. My clarification question,
10 Mr. Zafar, is whether or not you were
11 talking to consultants about Intuitive
12 Surgical in this third-party repair issue
13 or consultants in the normal course of
14 your job?

15 A. In the normal course of my job,
16 sorry for the...

17 Just to clear up the record, if
18 I said hundreds, that was more a figure of
19 speech; if you want -- it was more in the
20 dozens, not hundreds.

21 Q. Apologies, I don't recall your
22 answer to this earlier.

23 Sitting here today, do you
24 recall the experts that you spoke with in
25 connection with this report?

1 ZAFAR

2 A. I don't.

3 Q. Turning to the first bullet,
4 which reads, "On the FDA side, while
5 summing knowledge that applicable
6 regulations are somewhat nebulous, the
7 majority of regulatory experts came to the
8 conclusion that Restore Robotics is not in
9 violation of FDA rules as a third-party
10 service provider of refurbished
11 instruments," do you see this?

12 A. Yes.

13 Q. Do you know what information
14 those experts that you spoke with had
15 about Restore Robotics in coming to this
16 determination?

17 A. I don't remember specifically.

18 Q. Do you know whether the experts
19 that are referred to in this paragraph had
20 spoken to anyone affiliated with Restore
21 Robotics in coming to their conclusion?

22 A. I don't know.

23 Q. Do you know whether the experts
24 referred to in this paragraph had observed
25 the process of EndoWrist, quote, repair

1 ZAFAR

2 that Restore Robotics was allegedly
3 performing?

4 A. No idea.

5 Q. Do you know whether the experts
6 referred to in this paragraph had observed
7 the process of extending the number of
8 times an EndoWrist could be used by any
9 other third party?

10 A. No idea.

11 Q. The last sentence of this first
12 page begins "given the abundance," do you
13 see that?

14 A. I do.

15 Q. It reads, "Given the abundance
16 of first-hand confirmation from hospital
17 customers that are exploring refurbished
18 instruments, the question is not whether,
19 but rather, how much Intuitive's business
20 will be impacted."

21 How many hospital customers did
22 you speak with that were exploring, quote,
23 refurbished, end quote, instruments?

24 A. I can't give you a specific.

25 Q. Do you recall which customers